

Wednesday, October 19, 2022, ALBANY, NY
Hon. Mae A. D'Agostino, Presiding
Clerk: Britney Norton
Steno: Jacqueline Stroffolino

KENDU P. STARMEL,

Plaintiff,

vs.

9:20-cv-89 MAD/DJS

**SGT. MICHAEL TOMPKINS;
C.O. TERRY JAMES; and
C.O. BENJAMIN LOCKLIN,**

Defendants.

APPEARANCES: Sivin, Miller, and Roche by: **Glenn Miller, Esq.,** for Plaintiff *with
paralegal Stephanie Leibowitz.*

Office of the NYS Attorney General by: **Stacey Hamilton, AAG and
Matthew Gallagher, AAG,** for Defendants.

JURY TRIAL DAY 1 - Wednesday, October 19, 2022

8:55 a.m. Judge D'Agostino meets with counsel in chambers.

9:47 a.m. Judge D'Agostino enters.

9:50 a.m. Jury Pool enters. Clerk calls case. Appearances noted for the record.

9:52 a.m. Judge D'Agostino addresses the jury pool.

9:56 a.m. Jury Pool Sworn (Oath to Veniremen).

9:57 a.m. Judge D'Agostino begins voir dire of the jurors.

10:00 a.m. Sidebar with jurors and counsel regarding certain voir dire questions.

10:20 a.m. 16 jurors seated in the jury box.

Wednesday, October 19, 2022, ALBANY, NY

Hon. Mae A. D'Agostino, Presiding

9:20-cv-89 MAD/DJS

Page 2

10:23 a.m. Judge D'Agostino continues voir dire of potential jurors.

10:40 a.m. Sidebar with jurors and counsel.

10:48 a.m. Empty jury seats refilled.

10:48 a.m. Judge D'Agostino continues voir dire of jurors.

10:58 a.m. Recess

11:00 a.m. Peremptories are exercised at sidebar.

11:21 a.m. Some jurors are excused and the selected jurors are reseated in the jury box.

11:22 a.m. Counsel state for the record:
- The jury, as selected, is Acceptable to the Plaintiff.
- The jury, as selected, is Acceptable to the Defense.

11:22 a.m. Jury of 8 plus 2 alternates sworn (Oath to Jurors in Civil Case).

11:22 a.m. Judge D'Agostino addresses the jurors.

11:23 a.m. Judge D'Agostino gives the Preliminary Charge to the Jury.

11:39 a.m. Plaintiff Opening Statements.

12:02 p.m. Defense Opening Statements.

12:10 p.m. Lunch Recess until 1:00 p.m.

1:00 p.m. Judge D'Agostino enters.

1:02 p.m. Jury enters.

1:02 p.m. The Plaintiff calls as its' *1st witness*, **KENDU STARMEL**. Witness sworn and questioned. P-13C, P-13A, P-13F presented to witness and offered into evidence. P-13 was stipulated into evidence prior to the start of trial. **P-13A-F is Accepted and Received.** P-28 marked for identification.

Wednesday, October 19, 2022, ALBANY, NY

Hon. Mae A. D'Agostino, Presiding

9:20-cv-89 MAD/DJS

Page 3

1:58 p.m. sidebar

1:58 p.m. The Plaintiff continues direct-examination of witness, **KENDU STARMEL**.

1:58 p.m. Jury excused for 5 minute recess. We will be taking a remote inmate witness out of order, for the purposes of judicial economy. The plaintiff's testimony will resume after this remote witness gives his testimony.

2:00 p.m. Recess

2:06 p.m. Judge D'Agostino enters.

2:09 p.m. Jury Enters.

2:10 p.m. The Plaintiff calls its' 2nd witness, **JULIO JIMINEZ**. Witness sworn and questioned. This witness appears remotely from a NYS Correctional Facility.

2:19 p.m. Defense cross-examination of witness, **JULIO JIMINEZ**.

2:28 p.m. The Plaintiff resumes direct-examination of plaintiff witness, **KENDU STARMEL**. The plaintiff is reminded that he is still under oath. P-14A-J presented to witness and offered into evidence by stipulation. **P-14A-J Accepted and Received**.

2:42 p.m. Sidebar with counsel.

2:44 p.m. The Plaintiff continues direct-examination of witness, **KENDU STARMEL**. P-14 presented to jury. P-2 presented to the jury and stipulated into evidence. **P-2 Accepted and Received**.

2:54 p.m. Sidebar with counsel.

2:55 p.m. The Plaintiff continues direct-examination of witness, **KENDU STARMEL**. P-18A-E (DOCCS Medical Records) stipulated into evidence. **P-18A-E Accepted and Received, subject to redaction**.

3:15 p.m. Sidebar with counsel - The Court rules on the mental health testimony and SHU testimony as to Kendu Starmel.

Wednesday, October 19, 2022, ALBANY, NY

Hon. Mae A. D'Agostino, Presiding

9:20-cv-89 MAD/DJS

Page 4

3:20 p.m. Recess for 10 minutes.

3:32 p.m. Judge D'Agostino enters.

3:35 p.m. Jury enters.

3:35 p.m. Defense cross-examination of witness, **KENDU STARMEL**. D-24 presented to witness for identification.

3:43 p.m. Judge D'Agostino gives a limiting instruction the jury regarding deposition testimony.

3:43 p.m. Defense continues cross-examination of witness, **KENDU STARMEL**. D-22 presented to witness for identification. D-11 (Plaintiff's Medical Records) presented to witness and stipulated into evidence. **D-11 Accepted and Received. D-5** presented to witness and stipulated into evidence.

4:42 p.m. Sidebar with counsel.

4:46 p.m. Defense continues cross-examination of witness, **KENDU STARMEL**. **D-11** presented to witness.

4:55 p.m. Jury excused until tomorrow, 10/20/22 at 9:00 a.m.
Judge D'Agostino addresses the jurors.

4:55 p.m. Court stands adjourned.